

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
and
THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO : 11141 of 2004

Between:

K. Amarnath S/o. K. Narsiang Rao
5-1-226, Old Ghasmandi, Secunderabad.

..... PETITIONER

AND

- 1 Recovery Officer, Debt Recovery Tribunal, Hyderabad.
- 2 Debt Recovery Tribunal, rep. by its Registrar, Hyderabad.
- 3 State Bank of Hyderabad, rep. by its Branch Manager, S.I.B. Division, Gunfoundary, Hyd.
- 4 Government of India, rep. by Secretary, Law and Legislative Affairs, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the 1st respondent in conducting auction sale of the mortgaged immovable property of the petitioner on 06.05.2004 in R.P. No. 49 of 2001 in O.A.No. 1190 of 1996 in contravention of the mandatory provisions contained in Rules 53 and 54 of the Rules and Section 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, is arbitrary and illegal and consequently set aside the auction sale dated 06.05.2004 and direct the 1st respondent to proceed with conduct of auction sale in accordance with the rules and with publicity to persons who may be interested in participating in the auction sale, if necessary by declaring that rule 60 of the rules under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 in so far as it requires deposit of the outstanding amount as a conditions precedent for maintaining an application for setting aside the sale before the 1st respondent, is arbitrary and unconstitutional and direct the 1st respondent to entertain the petition for setting aside the auction sale without the requirement of deposit of the

outstanding amount and grant such other relief as it deems fit in the circumstances.

Counsel for the Petitioner: MR.V.VENKATARAMANA,ADVOCATE
Counsel for the Respondents 1,2 &4: MR.A.RAJASHEKAR REDDY

**Standing Counsel for
Central Govt.**

Counsel for Respondent No.3: Mr. K.V.Simhadri, Advocate.

The Court at the stage of admission made the Following :

ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Petitioner is a person who has suffered an order obtained by 3rd respondent under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 in O.A.No. 1190 of 1995. In order to have the amount due recovered, the Bank initiated proceedings in R.P.No. 49 of 2001 and obtained an order for sale of the mortgaged immovable property. After proclamation of sale was issued by the Recovery Officer, the mortgaged property was ultimately put to sale by public auction on 6.5.2004. The sale is not yet confirmed.

Petitioner, in this Petition filed under Article 226 of the Constitution of India on 1.7.2004, prayed to declare the action of the first respondent in conducting auction sale of the mortgaged immovable property of the petitioner in contravention of the mandatory provisions contained in Rules 53 and 54 of the Rules and Section 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 as arbitrary and illegal, and, has consequentially prayed for setting aside the auction sale and directing the first respondent to proceed to conduct the auction sale in accordance with the Rules.

The petitioner, in order to obtain the relief prayed for in the Writ Petition, alleged that auction sale was conducted in contravention of the mandatory provisions, and, he is interested in filing an application to set aside the sale of immovable property as per Rule 60 of the Rules notified in Part-II of Schedule

II which lay down the procedure for recovery of tax, framed under the Income-tax Act, and, which are applicable to the instant case. He submitted that, he has substantial merit in seeking for setting aside the auction sale, but, the requirement of depositing the amount recoverable with interest, is a condition contrary to law and in view of that condition, it must be held that there is no remedy under the Act or the Rules, under which, he can make a prayer for setting aside the sale of the property.

When the Petition came up for our consideration on 6.7.2004, we heard learned counsel for the petitioner to some extent, and, it was noticed that reference to Rule 60 made in the Writ Petition, and, questioning its validity was not in consonance with the averments made in the Writ Petition, learned counsel pointed out that the petitioner is questioning the virus of Rule 61 and not Rule 60 and, therefore, he took time and has, today, filed an affidavit stating that the petitioner is questioning Rule 61 of the Rules, which makes a provision for filing an application to set aside the sale of immovable property on the ground of non-service of notice or other material irregularity in the conduct of sale.

Learned counsel for the petitioner submits that the condition precedent for entertaining an application under Rule 61 is that the defaulter questioning the sale on the ground of material irregularity in publishing or conducting of sale must deposit the amount recoverable from him in the execution of the Certificate. It is submitted that this condition is onerous and cannot be complied with as it is ultra vires. Such a condition makes the remedy available for questioning the sale illusory.

Needless to add that the defaulter or any person whose interests are affected on sale of property by public auction is entitled to question the legality of the sale on the ground mentioned in Rule 61. Such remedy was not availed of by the petitioner. Objections were not filed by him within 30 days and have not been filed till-date. The petitioner without filing objections filed this writ petition saying that he is interested to file objections and for that reason, he wanted to question validity of Rule 61.

In such like petition where objections could have been filed by the

petitioner challenging the sale, we are not inclined to go into the hypothetical question on the legality and validity of the provision, since even if the petition to that extent is allowed, the petitioner will not be in a position to file objections challenging the sale and, for that reason, we are of the view that this Writ Petition raises only hypothetical question and will proceed to dismiss the same. The Writ Petition, therefore, is dismissed. No costs.

DEVINDER GUPTA, C.J.

8.7.2004.

G.ROHINI, J.

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Note:

Issue cc within three days.

(BO)

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To

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- 3 The Branch Manager, State Bank of Hyderabad, S.I.B. Division, Gunfoundary, Hyd.
- 4 The Secretary, Government of India, Law and Legislative Affairs, New Delhi.
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